

whether an applicant satisfies the various financial thresholds. More precise details are discussed in the subsections that follow.

Proposed Financial Caps:

- Entrepreneurs' Blocks: To bid in the entrepreneurs' blocks, the applicant, including attributable investors and affiliates, must cumulatively have less than \$125 million in gross revenues and less than \$500 million in total assets. No individual attributable investor or affiliate may have \$100 million or more in personal net worth.
- Small Business: To qualify for special measures accorded a small business, the applicant, including attributable investors and affiliates, must cumulatively have not in excess of \$40 million in gross revenues. No individual attributable investor or affiliate may have in excess of \$40 million in personal net worth. (Note: this is the small business definition we have adopted above). We seek comments on whether in an entrepreneur's block we should define small businesses differently.

Proposed Attribution Rules:

- Control Group. The gross revenues, total assets and personal net worth of certain investors are not considered so long as the applicant has a "control group" consisting of one or more individuals or entities that control the applicant, hold at least 25 percent of the equity and, for corporations, at least 50.1 percent of the voting stock.
- The gross revenues, total assets and personal net worth of each member of the control group are counted toward the financial caps.
- Other Investors. Where the applicant has a control group, the gross revenues, total assets and personal net worth of any other investor are not considered unless the investor holds 25 percent or more of the applicant's passive equity (which, for corporations, will include as much as 15 percent of the voting stock).
- Passive Equity. Passive equity is limited partnership or non-voting stock interests or voting stock interests of 15 percent or less of the issued and outstanding voting stock.
- Proposed Option for Minority or Woman-Owned Applicants. If the control group (consisting entirely of women and/or minorities) owns at least 50.1 percent of the equity and, for corporations, at least 50.1 percent of the voting stock, then the gross revenues, total assets and personal net worth of any other investor are not considered unless the investor holds more than 49.9 percent of the applicant's passive equity (which, for corporations, includes no more than as 15 percent of the voting stock).

- Affiliates. The gross revenues, assets and personal net worth of outside interests held by the applicant (and the attributable investors in the applicant) are counted toward the financial caps if the applicant (or the attributable investors in the applicant) control or have power to control the outside interests or if the applicant (or the attributable investors in the applicant) is under the control of the outside interests. The financial interests of spouses are also attributed to each other.

2. Definition of Women and/or Minority-Owned Business

80. The points below summarize the two structural options proposed to be available to firms that wish to qualify for the special provisions adopted for businesses owned by minorities and women. These options will be discussed in more detail in the text that follows.

50.1 Percent Equity Option:

- If women and/or minority principals control the applicant and own at least:
 - 50.1 percent of the equity, and
 - 50.1 percent of the voting stock, in the case of corporations
- Then any other investor may hold:
 - not more than 49.9 percent of the passive equity (which, for corporations, includes as much as 15 percent of the voting stock).

25 Percent Equity Option:

- If women and/or minority principals control the applicant and own at least:
 - 25 percent of the equity, and
 - 50.1 percent of the voting stock, in the case of corporations
- Then any other investor may hold:
 - 25 percent or less of the passive equity (which, for corporations, includes as much as 15 percent of the voting stock).

81. We also request comment on alternatives intended to deter shams and fronts and to prevent abuse of the incentives for designated entities. The Commission would enforce vigorously any requirements adopted. These proposals include a holding and limited transfer period for licensees in the entrepreneurs' blocks and repayment provisions associated with bidding credits and installment payments. These steps and our eligibility and affiliation rules are intended to ensure that the benefits of any measures we take flow to the entities Congress intended. Ultimately, we believe that we will best fulfill our statutory mandate by creating

powerful incentives for bona fide designated entities to attract the capital necessary to compete both in auctions for narrowband PCS and in the provision of service. We therefore specifically request that commenters address in detail the impact any of these alternatives would likely produce on the opportunity for designated entities to acquire narrowband PCS licenses.

D. The Entrepreneurs' Blocks

82. As discussed above, because the auction process itself requires additional expenditures of capital to acquire licenses, this new licensing procedure in many respects holds the potential to erect an additional barrier to entry that had not existed even under the Act's previous licensing methods, comparative hearings and lotteries. As reflected in the House Committee Report, Congress was well aware of that possibility and wanted to ensure that competitive bidding should not exclude smaller entities from obtaining licenses.¹¹⁹ The inability of small businesses and businesses owned by women and minorities to obtain adequate private financing creates a serious imbalance between these companies and large businesses in their prospects for competing successfully in narrowband PCS auctions.

83. We anticipate that the results of the narrowband regional auctions as well as the comments we seek in this Notice will be relevant to our final conclusion of whether an entrepreneurs' block is appropriate in narrowband PCS. We seek comments on what results in the regional auction would or would not justify the use of an entrepreneurs' block in subsequent narrowband auctions. The \$125 million gross revenue/\$500 million asset caps have the effect of excluding the large companies that would easily be able to afford designated entities and frustrate Congress's goal of disseminating licenses among a diversity of licensees. At the same time, this restriction does not exclude many firms that, while not large in comparison with other telecommunications companies, nevertheless are likely to have the financial ability to provide sustained competition for the PCS licensees. For example, the \$125 million gross revenue figure corresponds roughly to the Commission's definition of a Tier 2, or medium-sized, local exchange carrier,¹²⁰ and would include virtually all of the

¹¹⁹ See H.R. Rep. No. 103-111 at 255.

¹²⁰ Local exchange carriers are categorized as Tier 1 and Tier 2 companies by applying the criterion that Sections 32.11(a) and 32.11(e) of the Commission's Rules use to distinguish Class A and Class B companies, respectively. Class A companies are those companies having annual revenues from regulated telecommunications operations of \$100 million or more; Class B companies are those companies having annual revenues from regulated telecommunications operations of less than \$100 million. The initial classification of a company is determined by its lowest annual operating revenues for the five immediately preceding years. A company's classification is changed when its annual operating revenue exceeds or is under the \$100 million mark in each of five consecutive years. The Commission imposes more relaxed regulatory requirements on Tier 2 LECs than on Tier 1

independently owned rural telephone companies, while excluding the largest incumbent paging licensees. Limiting the personal net worth of any individual investor or affiliate of the applicant to \$100 million would prevent a very wealthy individual from leveraging his or her personal assets to allow the applicant to circumvent the size limitations of the entrepreneurs' blocks.

84. In determining which of the blocks in each market should constitute the entrepreneurs' blocks, we seek to make sufficient opportunity available to businesses that would qualify for the entrepreneurs' blocks and to those that would not. We seek comment on whether it would be appropriate to include all of those remaining blocks designated for bidding credits and to add one additional MTA block and one additional BTA block if we decide to adopt the proposal. We seek comment on the choice of blocks and the number of blocks that should be included in the entrepreneurs' blocks. We want to choose blocks to provide adequate amounts of spectrum and geographic territory necessary to ensure that the eligible bidders will be able to compete effectively. We believe that designating a variety of frequency blocks as entrepreneurs' blocks would satisfy the needs of those parties who believe they must have larger amounts of spectrum to compete effectively as well as the needs of other designated entities who require smaller blocks. Finally, it would not foreclose opportunities for other parties.¹²¹

85. Holding and Limited Transfer Period. Because we interpret the congressional goal of giving designated entities the opportunity to provide spectrum-based services to extend beyond merely obtaining a license, we seek comment on whether we should prohibit licensees in the entrepreneurs' blocks from voluntarily assigning or transferring control of their licenses for a period of three years from the date of the license grant.¹²² We further ask commenters

LECs. See Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, 2 FCC Rcd 5770, 5772 (1987), Commission Requirements for Cost Support Material to be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060 n. 3 (Comm. Carr. Bur. 1994); Commission Requirements for Cost Support Material to be Filed with Access Tariffs on March 1, 1985, Public Notice, Mimeo No. 2133 (Comm. Carr. Bur. released Jan. 25, 1985).

¹²¹ In addition, incumbent paging licensees would have the opportunity to bid on 2,176 MTA and BTA response channel licenses reserved for existing paging licensees.

¹²² We propose considering exceptions to this three-year holding period rule on a case-by-case basis in the event of a judicial order decreeing bankruptcy or a judicial foreclosure if the licensee proposes to assign or transfer its authorization to an entity that meets the financial thresholds for bidding in the entrepreneurs' blocks. In addition, we note that a transfer is considered "involuntary" if it is made pursuant to a court decree requiring the sale or transfer of the licensee's stock or assets. Paramount Pictures, Inc., 43 FCC 453 (1949); Cf. William Penn Broadcasting, 16 FCC 2d 1050 (1969).

to address whether, for the next two to seven years of the license term, we should permit the licensee to assign or transfer control of its authorization only to an entity that satisfies the entrepreneurs' blocks entry criteria.¹²³ Comments should address whether any restrictions of this type would accurately balance the goal of promoting access to capital by designated entities with the need to assure the integrity of our process. During this limited transfer period, licensees would continue to be bound by the financial eligibility requirements, as set forth below.¹²⁴ In addition, a transferee or assignee who receives an entrepreneurs' block license during this period would remain subject to the transfer restrictions for the balance of the holding period.¹²⁵ Should any of these proposals be adopted, the Commission would conduct random pre- and post-auction audits to ensure that applicants receiving preferences are in compliance with the FCC's rules.

86. Our goals are to create significant opportunities for entrepreneurs, small businesses, and businesses owned by minorities and women to compete in auctions for licenses and attract sufficient capital to build-out those licenses and provide service. We recognize the critical need to attract capital, which requires flexibility. We are very concerned, however, that such flexibility not undermine our more fundamental objective, which is to ensure that designated entities retain de facto and de jure control of their companies. The holding and limited transfer period upon which we seek comment, may help promote this objective. We seek comment on the effect that any rules of this sort are likely to have on the achievement of our goals of meaningful long-term participation by designated entities and how such a rule would impact the ability to raise capital.

E. Bidding Credits

87. In the Third Report and Order we adopted a 25 percent bidding credit for businesses owned by minorities and women. We concluded that the use of bidding credits would be an effective tool to ensure that women and minority-owned businesses have opportunities to participate in the provision of narrowband services.¹²⁶ And, in this Order, we

¹²³ We note that a licensee assigning its authorization pursuant to this limited transfer period might be subject to the repayment provisions associated with installment payments and bidding credits. See infra ¶¶ 91, 98.

¹²⁴ See infra ¶¶ 101-106. In addition, for purposes of the installment payment and bidding credit provisions set forth below, licensees will continue to be bound by the financial eligibility requirements throughout the term of the license.

¹²⁵ For example, if an entrepreneurs' block authorization is assigned to an eligible business in year four of the license term, it would be required to hold that license until the original holding period expires, subject to the same exceptions that applied to the original licensee.

¹²⁶ See Third Report and Order at ¶ 72.

raised this bidding credit to 40 percent for the regional narrowband auctions. While we do not think that a bidding credit of this magnitude is required when used in conjunction with an insulated entrepreneurs' block, we continue to believe that a bidding credit is necessary to ensure that women and minority-owned businesses have the opportunity to participate in narrowband PCS. In addition, we believe that a small bidding credit is warranted to help small businesses overcome financing obstacles. Accordingly, we propose to continue to provide a bidding credits in the proposed entrepreneurs' blocks that would give small businesses a 10 percent credit, women and minority-owned businesses a 15 percent credit, and small businesses owned by women and minorities an aggregate credit of 25 percent.

88. In ex parte presentations to the Commission, many commenters have indicated that, without spectrum set-asides for narrowband PCS, bidding credits would not be sufficient to assist designated entities in outbidding very large entities who are likely to bid for licenses in this service. PCSD states, for example, that all of the existing large paging companies can justify much larger payments for licenses than could an individual entrepreneur, regardless of a bidder's credit. Therefore, it believes no entrepreneur will win a bid for any PCS market that is desirable to any of the large companies.¹²⁷ As described above, in order to afford designated entities a realistic opportunity to obtain licenses in the narrowband PCS service, we propose to exclude very large businesses from bidding for licenses in the entrepreneurs' blocks. These measures would enhance the value of the bidding credits for small businesses and businesses owned by minorities and women. In this context, we believe that bidding credits can have a significant effect on the ability of small businesses and businesses owned by women and minorities to participate successfully in auctions for licenses in entrepreneurs' blocks.

89. As explained above, the capital access problems faced by small firms and women and minority-owned firms make special provisions like bidding credits appropriate for these designated entities in narrowband PCS.¹²⁸ In effect, the bidding credit would function as a discount on the bid price a firm would actually have to pay to obtain a license and, thus, will address directly the financing obstacles encountered by these entities. Moreover, as noted previously, women and minorities face discrimination in lending and other barriers to entry not encountered by other firms, including other designated entities. Therefore, as one of the measures designed to counter these increased capital formation difficulties, we propose to provide them with a slightly higher bidding credit than small businesses. Thus, women and minorities would receive a 15 percent payment discount that is applied against the amounts they bid on licenses. Absent such measures targeted specifically to women and minorities, it

¹²⁷ Ex parte filing of PCSD Development Corporation (PCSD), August 9, 1994.

¹²⁸ Although we did not previously grant bidding credits to small businesses in the Third Report and Order, we now believe that, given the exponentially greater expense likely to be incurred in acquiring broadband PCS licenses, bidding credits might be a proper means to ensure that these firms have the opportunity to participate in this service.

might be impossible to assure that these groups achieve any meaningful measure of opportunity for actual participation in the provision of narrowband PCS. Similarly, it is reasonable to assume that small firms owned by women and minorities suffer the problems endemic to both groups. Therefore, we propose a cumulative bidding credit of 25 percent for these groups. We believe that these measures will help women and minorities to attract the capital necessary for obtaining a license and constructing and operating a narrowband PCS system, consistent with the intent of Congress. We seek comments on these proposals.

90. As discussed below, we have also proposed to modify the definition of a minority and women-owned firm.¹²⁹ To receive a 10 percent bidding credit, we propose that a small business must satisfy the same gross revenue test adopted for installment payments. As explained more fully in the small business definition section, we propose that a consortium consisting entirely of small businesses also be eligible for a 10 percent bidding credit even if the combined gross revenues of the consortium exceed the small business gross revenues threshold. In addition, we propose that a small business that is owned by women and minorities must satisfy the definition of a business owned by minorities and women as well as the small business definition to receive a 25 percent bidding credit. Finally, we propose that a consortium of small firms owned by women and/or minorities is eligible for a 25 percent bidding credit, provided that each member of the consortium meets the definition of a small business and a minority and/or women-owned firm.

91. Repayment Policies Applicable to Bidding Credits To ensure that bidding credits benefit the parties to whom they are directed, we inquire whether we should adopt strict repayment policies: if, within the original 10-year term, a licensee applies to assign or transfer control of a license to for example, an entity that is not eligible for as high a level of bidding credit, then the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify would have to be paid to the U.S. Treasury as a condition of approval of the transfer. Thus, an assignment of a license from a small minority-owned firm to a women-owned firm with revenues greater than \$40 million would require repayment of 10 percent of the original bid price (25 percent less 15 percent) to the Treasury. A sale to an entity that would not qualify for bidding credits would entail full repayment of the original bidding credit as a condition of transfer. Small businesses also would be bound by the financial eligibility rules during the entire license term as set forth below. Thus, if after licensing an investor purchases an "attributable" interest in the business and, as a result, the gross revenues of the firm exceed the \$40 million small business cap, this repayment provision would apply.¹³⁰ If such a proposal were to be adopted, we would envision that these repayment provisions apply throughout the original term of the license to help promote the long-term holding of licenses by those parties receiving bidding

¹²⁹ See infra ¶¶ 107-117.

¹³⁰ See infra ¶¶ 102-106, for a discussion of which investor interests would be "attributable" for purposes of calculating the gross revenues caps.

credits. Nevertheless, as in the case of the holding period and transfer restrictions discussed at ¶¶88-89 above we seek comment on any effects such rules may have on the ability of designated entities to attract capital. We therefore ask commenters to address in detail whether this type of restriction would further the goal of increasing the number of designated entities participating in the provision of narrowband PCS services.

F. Installment Payments

92. A significant barrier for most businesses small enough to qualify to bid in the proposed entrepreneurs' blocks would be access to adequate private financing to ensure their ability to compete against larger firms in the PCS marketplace.¹³¹ In the Third Report and Order, we concluded that installment payments are an effective means to address the inability of small businesses to obtain financing and will enable these entities to compete more effectively for the auctioned spectrum. We also determined that small businesses eligible for installment payments would only be required to pay half of the down payment (10 percent of the winning bid, as opposed to 20 percent) five days after the auction closes, with the remaining 10 percent payment deferred until five days after grant of the license. Finally, we indicated that installment payments should be made available to small businesses at an interest rate equal to the rate for U.S. Treasury obligations.¹³²

93. In light of the expected substantial capital required to acquire narrowband PCS licenses, we propose that installment payments be available to most businesses that obtain narrowband PCS licenses in the proposed entrepreneurs' blocks. By allowing payment in installments, the government would in effect be extending credit to licensees, thus reducing the amount of private financing needed prior to and after the auction. Such low cost government financing would promote long-term participation by these businesses, which, because of their smaller size, lack access to sufficient capital to compete effectively with larger PCS licensees. Under the rules we propose today, installment payments would be available to smaller entities that do not technically qualify as small businesses for purposes of other measures we have proposed, such as bidding credits. We believe, however, that, given the significant costs of narrowband PCS licenses and the likelihood of very large participants in the other blocks, this option would be fully consistent with the congressional intent in enacting Section 309(j)(4)(A) to avoid a competitive bidding program that has the effect of favoring incumbent providers of other communications services, with established revenue streams, over smaller entities.¹³³

¹³¹ See e.g., comments of SBA Chief Counsel of Advocacy at 6, 20-21, NTIA at 27; SBAC Report at 2 (September 15, 1993).

¹³² See Third Report and Order at ¶¶ 86-90.

¹³³ See H.R. Rep. No. 103-111 at 255 (Commission has the authority to design alternative payment schedules in order that the auction process does not inadvertently favor only those with "deep pockets" over new or small companies).

94. Under the plan we propose here, all licensees that satisfy the gross revenues, total assets and personal net worth criteria to bid in the entrepreneurs' blocks would be allowed to pay in installments for regional and MTA licenses granted in those blocks. With respect to the BTA licenses in those blocks, however, only businesses owned by women and minorities and those licensees with less than \$75 million in gross revenues would be able to use installment payments.¹³⁴ This distinction is based on the expected lower costs to acquire licenses and construct systems in the BTAs. However, if we adopt our proposal to redesignate BTA licenses as nationwide or regional licenses, we propose extending installment payments on those blocks to all parties eligible for the entrepreneurs' blocks. Thus, with the exception of companies owned by women or minorities, which face additional problems accessing capital, we do not think that a firm with gross revenues exceeding \$75 million would require government financing to be competitive for the BTA licenses.¹³⁵

95. The installment payment option would enable qualified businesses to pay their winning bid over time. These businesses would still make the applicable upfront payment in full before the auction, but would be required to make a post-auction down payment equaling only ten percent of their winning bids, half of which will be due five business days after the auction closes. Payment of the other half of the down payment would be deferred until five business days after the license is granted. In general, the remaining 90 percent of the auction price would be paid in installments with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Under this general rule, only payments of interest would be due for the first year with principal and interest payments amortized over the remaining nine years of the license. Timely payment of all installments would be a condition of the license grant and failure to make such timely payment would be grounds for revocation of the license.¹³⁶ We seek comment on this installment payment proposal.

96. Enhanced Installment Payments As explained previously, small businesses and businesses owned by minorities and women face capital access difficulties not encountered by other firms and, thus, require special measures to ensure their opportunity to participate in

¹³⁴ We will apply the same \$500 million total assets and \$100 million personal net worth standards for purposes of determining eligibility for installment payments in the BTA entrepreneurs' blocks. The attribution rules set forth with regard to eligibility to bid will also apply in all of the BTA entrepreneurs' blocks.

¹³⁵ We note that a consortium of small businesses would be eligible for installment payments in any market so long as each member of the consortium satisfies the definition of a small business, as set forth in Section V.A., *infra*.

¹³⁶ As described in the Second Report and Order, the Commission may, on a case-by-case basis, permit a three to six month grace period within which a licensee may seek a restructuring of the payment plan.

narrowband PCS. Accordingly, we propose an "enhanced" installment payment plan for these entities. Pursuant to this enhanced installment payment plan, small businesses who win licenses in the proposed entrepreneurs' blocks would be required to pay interest only for the first two years of the license term at the same interest rate as set forth in the general rule. Businesses owned by women and/or minorities would be able to make interest-only payments for three years. Interest would accrue at the Treasury note rate without the additional 2.5 percent.¹³⁷ And, finally, businesses that are both small and owned by women and/or minorities would be required to pay only interest for five years. Interest would accrue at the Treasury note rate.

97. These proposed enhanced installment payments are narrowly tailored to the needs of the various designated entities, as reflected in the record in this proceeding. We believe that varying the moratorium on principal in the early years of the loan and varying the interest rate based on these needs would allow small businesses and companies owned by women and/or minorities to bid higher in auctions, thereby increasing their chances for obtaining licenses. In addition, it would allow them to concentrate their resources on infrastructure build-out and, therefore, it would increase the likelihood that they become viable narrowband PCS competitors. We request comment on these proposed enhancements to the installment payment plan.

98. Unjust Enrichment Applicable to Installment Payments To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, we propose to retain the unjust enrichment provisions adopted in the Third Report and Order applicable to installment payments. Specifically, if a licensee that was awarded installment payments seeks to assign or transfer control of its license to an entity not meeting the applicable eligibility standards set out above during the term of the license, we would require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer.¹³⁸ Moreover, if an entity seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan, if any, for which the acquiring entity qualifies would become effective immediately upon transfer. Thus, a higher interest rate and earlier payment of principal may begin to be applied. For example, a transfer of a license in the fourth year after license grant from a small minority-owned firm to a small non-minority owned firm would require that the firm begin principal payments and the balance would begin accruing interest at a rate 2.5 percent above the rate that had been in effect. Finally, if an investor subsequently purchases an "attributable" interest in the businesses and, as a result, the

¹³⁷ To be eligible for these "enhanced" installment payments, a firm would have to satisfy either of the two alternative definitions of a woman or minority-owned business, as set forth in ¶¶107-117, infra, as well as the applicable financial caps.

¹³⁸ See Third Report and Order at ¶ 89.

gross revenues or total assets of the business exceed the applicable financial caps, this unjust enrichment provision would also apply.¹³⁹ We seek comment on these proposals.

G. Upfront Payments

99. As previously indicated in the Third Report and Order, the upfront payment requirement was designed to ensure that bidders are qualified and serious and to provide the Commission with a source of funds in the event that it becomes necessary to assess default or bid withdrawal penalties.¹⁴⁰ The upfront payment ensures that bids during the course of the auction are bona fide and convey information about the value of the underlying licenses. Our standard upfront payment for narrowband PCS is \$0.02 per MHz per pop. As an additional means of enhancing the opportunity of designated entities to participate in competitive bidding we propose to reduce the required upfront payment for those applicants. As we concluded in the Fifth Report and Order, we are concerned that the \$0.02 per MHz per pop upfront payment requirement might impose a barrier for smaller entities wishing to participate in the auctions. Moreover, we note that most bidders in the proposed entrepreneurs' blocks would be entitled to pay for their licenses in installments, which would require a down payment of only five percent of the winning bid. We are concerned that requiring an upfront payment that may be larger than the down payment that the winning bidder is required to tender could discourage auction participation.

100. For these reasons, we propose to reduce the upfront payment requirement to \$0.015 per MHz per pop for bidders in the entrepreneurs' blocks. This 25 percent discount should facilitate auction participation by capital-constrained companies and would permit them to conserve resources for infrastructure development after winning a license. Moreover, since the upfront payment is still substantial, we believe that insincere bidding would be discouraged and the Commission would have access to funds if it must collect default or bid withdrawal penalty payments.

H. Definitions and Eligibility

1. Eligibility to Bid in the Proposed Entrepreneurs' Blocks

101. As noted previously, eligibility to bid in the proposed entrepreneurs' blocks would be limited to companies that, together with their affiliates and investors, had gross revenues of less than \$125 million in each of the last two years and have total assets of less than \$500 million at the time their short form applications are filed. In addition, we propose to prohibit an applicant from bidding in these blocks if any one attributable individual

¹³⁹ See infra ¶¶ 102-106, for a discussion of which investor interests would be "attributable" for purposes of calculating the gross revenues and total assets thresholds.

¹⁴⁰ Third Report and Order, ¶¶ 41-45.

narrowband PCS. Accordingly, we propose an "enhanced" installment payment plan for these entities. Pursuant to this enhanced installment payment plan, small businesses who win licenses in the proposed entrepreneurs' blocks would be required to pay interest only for the first two years of the license term at the same interest rate as set forth in the general rule. Businesses owned by women and/or minorities would be able to make interest-only payments for three years. Interest would accrue at the Treasury note rate without the additional 2.5 percent.¹³⁷ And, finally, businesses that are both small and owned by women and/or minorities would be required to pay only interest for five years. Interest would accrue at the Treasury note rate.

97. These proposed enhanced installment payments are narrowly tailored to the needs of the various designated entities, as reflected in the record in this proceeding. We believe that varying the moratorium on principal in the early years of the loan and varying the interest rate based on these needs would allow small businesses and companies owned by women and/or minorities to bid higher in auctions, thereby increasing their chances for obtaining licenses. In addition, it would allow them to concentrate their resources on infrastructure build-out and, therefore, it would increase the likelihood that they become viable narrowband PCS competitors. We request comment on these proposed enhancements to the installment payment plan.

98. Unjust Enrichment Applicable to Installment Payments To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, we propose to retain the unjust enrichment provisions adopted in the Third Report and Order applicable to installment payments. Specifically, if a licensee that was awarded installment payments seeks to assign or transfer control of its license to an entity not meeting the applicable eligibility standards set out above during the term of the license, we would require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer.¹³⁸ Moreover, if an entity seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan, if any, for which the acquiring entity qualifies would become effective immediately upon transfer. Thus, a higher interest rate and earlier payment of principal may begin to be applied. For example, a transfer of a license in the fourth year after license grant from a small minority-owned firm to a small non-minority owned firm would require that the firm begin principal payments and the balance would begin accruing interest at a rate 2.5 percent above the rate that had been in effect. Finally, if an investor subsequently purchases an "attributable" interest in the businesses and, as a result, the

¹³⁷ To be eligible for these "enhanced" installment payments, a firm would have to satisfy either of the two alternative definitions of a woman or minority-owned business, as set forth in ¶¶107-117, infra, as well as the applicable financial caps.

¹³⁸ See Third Report and Order at ¶ 89.

investor's gross revenues or total assets would bring the company over the \$125 million gross revenues/\$500 million total assets thresholds, or if that investor's personal net worth exceeds the \$100 million personal net worth cap. Similarly, while individual members of the control group could change (if it would not result in a transfer of control of the company), the control group would have to maintain control and at least 25 percent of the equity and 50.1 percent of the voting stock.¹⁴² A company would be permitted to grow beyond these gross revenues/total assets caps, however, through equity investment by non-attributable (i.e. passive) investors, debt financing, revenue from operations, business development or expanded service.¹⁴³

106. We seek comment on these proposed eligibility requirements for the entrepreneurs' blocks. In particular, parties should discuss the equity and control requirements for the control group and investors in both the corporate and partnership context. In addition, commenters should discuss the alternative option for women and minority-owned companies and the ability of small businesses to form consortia. With regard to all of these issues, parties are asked to comment on the proposals' impact on the ability of entities to obtain financing as well as on the Commission's goals of deterring shams and fronts.

3. Definition of Women and Minority-Owned Business

107. As discussed above, we have proposed steps in this order to address the special funding problems faced by minority and women-owned firms and thereby to ensure that these groups have the opportunity to participate and become strong competitors in the narrowband PCS service.¹⁴⁴ We previously adopted a tax certificate program for women and minorities to allow more sources of potential funding, and in this Order have relaxed the attribution standard used to determine eligibility as a qualified small business.

108. For purposes of implementing these steps, we propose to depart from the definition of a minority and woman-owned firm that was adopted in the Third Report and

¹⁴² A minority or woman-owned company would have to continue to adhere to the attribution rules applicable to it, set out above.

¹⁴³ These rules would continue to apply in this manner throughout the license term with regard to a firm's continuing eligibility for installment payments, "enhanced" installment payments and bidding credits.

¹⁴⁴ We propose to use the same criteria set forth in the Second Report and Order, and consider the members of the following groups "minorities" for purposes of our rules: "[T]hose of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction." See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, 980 n.8 (1978); Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849, 489 n.1 (1982). Moreover, as adopted in the Second Report and Order, minority and women-owned businesses would be eligible for special measures only if the minority and women principals are also United States citizens.

investor or principal in the applicant has \$100 million or greater in personal net worth at the short form application filing date.

2. Attribution Rules for the Proposed Entrepreneurs' Blocks

102. For purposes of determining whether an entity qualifies to bid in the entrepreneurs' blocks, we propose to follow the control group and attribution rules set forth with regard to eligibility to bid as a small business.¹⁴¹ In particular, winning bidders would be required to identify on their long-form applications a control group that controls the applicant, owns at least 25 percent of the equity, and in the case of a corporation, holds at least 50.1 percent of the voting stock. For partnership applicants, we propose that every general partner be considered part of the group. The gross revenues and total assets of each member of the control group and each member's affiliates would be counted toward the \$125 million/\$500 million thresholds, regardless of the size of the member's total interest in the applicant. The \$100 million personal net worth limitation would also apply to each member of the control group. We would not consider the gross revenues or personal net worth of any other investor unless the investor holds 25 percent or more of the outstanding passive equity in the applicant, which, as defined above, includes as much as fifteen percent of the voting stock in a corporate applicant.

103. We also propose the more relaxed attribution standard set forth in ¶¶ 49-51 with regard to investors in small businesses owned by minorities and women. Specifically, we would not consider the gross revenues or personal net worth of a single passive investor in a minority or female-owned small business unless the investor holds in excess of a 49.9 percent passive interest (which includes as much as fifteen percent of a corporate applicant's voting stock), provided the women or minority control group maintains at least 50.1 percent of the equity and, in the case of a corporate applicant, at least 50.1 percent of the voting stock. We believe that such revenue attribution would ensure that only bona fide small businesses are able to take advantage of the special provisions we have proposed, but would allow those businesses to attract sufficient equity capital to be truly viable contenders in the PCS industry.

104. In addition, we propose to allow a consortium of small businesses to qualify for any of the measures adopted in this order applicable to individual small businesses including the ability to bid in the entrepreneurs' block. As used here, the term "consortium" means a conglomerate organization formed as a joint venture among mutually-independent business firms, each of which individually satisfies the definition of a small business.

105. We explain how these attribution rules would apply with regard to any holding and limited transfer period for entrepreneurs' block licensees should such rules ultimately be adopted. During this holding period, an entrepreneurs' block licensee could not sell more than 25 percent of its passive equity to a single investor if the resulting attribution of that

¹⁴¹ See supra ¶¶ 41-47.

partnerships, the term means limited partnership interests that do not have the power to exercise control of the entity. We ask commenters specifically to address whether the proposed fifteen percent voting interest limitation strikes the correct balance, or whether a higher percentage would facilitate capital formation without unduly contributing to a proliferation of shams. In addition, the Second Report and Order, all investor interests would be calculated on a fully-diluted basis, meaning that agreements such as stock options, warrants and convertible debentures generally would be considered to have a present effect and would be treated as if the rights thereunder already have been fully exercised.¹⁴⁶ We recognize that the requirement that other investors own only passive interests would be a departure from the definition of a minority or women-owned business adopted in the Second Report and Order, but because of the very significant financial contribution that may be made by such other investors in designated entities, we believe that the passive equity requirement may be appropriate as an additional safeguard. In addition, we seek comments on whether these rules as currently framed may affect the ability of legitimate designated entities to obtain the capital needed to participate in the auction.

111. As a second proposed option, women and minority-owned firms would be able to sell up to 75 percent of the company's equity, provided that no single investor may hold 25 percent or more of the firm's passive equity, which is defined in the same manner as above. For example, a corporation with 100 shares of voting stock and 100 shares of non-voting stock, with the 200 shares representing the total outstanding shares of the company, could qualify as a minority or women-owned business under the following circumstances. The minority or women principals would have to own at least 51 shares of voting stock, which satisfies the requirement that they have voting control and, in this case, also meets the requirement that they hold at least 25 percent of the equity. Two other investors could each own 34 shares of non-voting stock and fifteen shares of voting stock, which represents 24.5 percent of the company's equity for each of the shareholders. A third investor could own the remaining 32 shares of non-voting stock and fifteen shares of the voting stock, or 23.5 percent of the equity. The remaining 4 shares of voting stock may be sold to other investors.

112. Whichever option is chosen, we would require establishment of a "control group" for women and minority-owned firms in much the same way we did for purposes of eligibility

eligible minorities or women, in order to retain at least 50.1 percent of the value of all outstanding shares of the corporation's stock, must own all of the corporation's remaining shares of stock; that is, 95 shares of voting stock and six shares of non-voting stock.

¹⁴⁶ As also noted in the Second Report and Order, we will consider departing from the requirement that the equity of investors in minority and women-owned businesses must be calculated on a fully-diluted basis only upon a demonstration, in individual cases, that options or conversion rights held by non-controlling principals will not deprive the minority and women principals of a substantial financial stake in the venture or impair their rights to control the designated entity. See Second Report and Order at ¶ 277.

Order. We have adopted relaxed attribution standards for businesses owned by women and minorities for purposes of qualifying for small business provisions (§ 46). We are proposing relaxed standards for businesses owned by women and minorities to qualify for the entrepreneurs' blocks. In the Third Report and Order, we found generally that to establish ownership by minorities and women, a strict eligibility standard should be adopted that required minorities or women to have at least a 50.1 percent equity stake and a 50.1 percent controlling interest in the designated entity. Third Report and Order at ¶68; 47 C.F.R. § 1.2110(b)(2). For future narrowband PCS auctions, we propose to retain the requirement that minorities and/or women control the applicant and hold at least 50.1 percent of a corporate applicant's voting stock. However, to establish their eligibility for certain benefits, summarized below, we propose an additional requirement that, even where minorities and women hold at least 50.1 percent of the applicant's equity, other investors in the applicant may own only passive interests, which, for corporate applicants, is defined to include as much as fifteen percent of the voting stock. In addition, provided that certain restrictions are met, we propose to allow women and minority-owned firms the option to reduce to 25 percent the 50.1 percent minimum equity amount that must be held.

109. We emphasized in the Third Report and Order that we did not intend to restrict the use of various equity financing mechanisms and incentives to attract financing, provided that the minority and women principals continued to own 50.1 percent of the equity, calculated on a fully-diluted basis, and that their equity interest entitled them to a substantial stake in the profits and liquidation value of the venture relative to the non-controlling principals. We noted, however, in the Second Report and Order that different standards that meet the same objectives may be appropriate in other contexts. Second Report and Order at ¶ 278. In view of the evidence of discriminatory lending experiences faced by minority and women entrepreneurs and the exceptionally great financial resources believed to be required by narrowband PCS applicants, we conclude that it may be appropriate to allow more flexibility with regard to the 50.1 percent equity requirements for this service in order to open doors to more sources of equity financing for women and minority-owned firms.

110. We propose therefore to allow women and minority-owned firms the following options. First, they may satisfy the general definition set forth in the Second Report and Order, which requires the minority and/or female principals to control the applicant, own at least 50.1 percent of its equity and, in the case of corporate applicants, hold at least 50.1 percent of the voting stock. Under this option, other investors may own as much as a 49.9 percent passive equity interest. As noted above regarding eligibility to bid in the entrepreneurs' blocks, passive equity in the corporate context means only non-voting stock may be held, or stock that includes no more than fifteen percent of the voting interests.¹⁴⁵ For

¹⁴⁵ For example, under this option, a corporate applicant with two classes of issued and outstanding stock, 100 shares of voting stock and 100 shares of non-voting stock, could sell to a single non-eligible entity 49.9 percent of the applicant's equity, consisting of 5 shares of the corporation's voting stock and 94 shares of its non-voting stock. Under this scenario,

control of an applicant.¹⁴⁷ We propose to apply those rules equally to the minority and women principals of minority and women-owned applicants. Consistent with our general policies with regard to women-owned applicants for purposes of our multiple ownership and cross-ownership rules in this broadcast context, we do not propose to adopt, at this time, any special rules or presumptions to determine whether women-owned applicants exercise independent control of their firms. See In the Matter of Clarification of Commission Policies Regarding Spousal Attribution, 7 FCC Rcd. 1920 (1992)

116. We also note here that we are proposing to depart from the provision in the Third Report and Order that bars publicly traded companies from qualifying as minority and woman-owned businesses for purposes of participating in auctions. Most of the steps proposed to assist these designated entities in this Further Notice (e.g., bidding credits and installment payments) are confined to winning bidders in the entrepreneurs' blocks, where there would be a financial limit on the size of participants. Because of the large capital entry costs of narrowband PCS, we now believe that even publicly traded companies owned by women and minorities that qualify to bid in entrepreneurs' blocks require additional measures, such as bidding credits and installment payments, to be able to participate successfully.

117. As noted above, we propose that applicants owned by women and minorities must meet the limitations on gross revenues, total assets and personal net worth to qualify for entry into the entrepreneurs' blocks. The size limitations would not apply, however, to all measures designed to assist applicants owned by minorities and or women. The tax certificate policy applies to all narrowband PCS licenses and would not be limited to licenses in the entrepreneurs' blocks. Therefore, businesses owned by minorities and women need not meet the gross revenue and other financial restrictions to qualify for tax certificates. But minority and women-owned firms would have to satisfy the Commission's structural ownership requirements to receive the benefits of tax certificates; that is, they would be subject to the limitation that interests held by investors who are not women and minorities must be passive.

4. Definition of an Affiliate

118. In the Second Report and Order, we referenced the SBA's affiliation rules for purposes of defining generally whether an entity qualifies as a small business and gave examples of how the affiliation rules would be applied. In the Fifth Report and Order, we expanded on the SBA's affiliation rules in establishing detailed affiliation standards for narrowband PCS to be used when designated entities must include "affiliates" to determine their eligibility for special designated entity provisions. In the Second Memorandum Opinion and Order that we adopted in this docket, we incorporate into our generic auction rules the affiliation standards that we established for narrowband PCS in the Fifth Report and Order. We propose to apply these affiliation standards would also apply to narrowband PCS for purposes of determining any of the above described, sized-based eligibility criteria for

¹⁴⁷ See supra ¶ 112.

to bid in the entrepreneurs' blocks. Specifically, winning bidders, transferees or assignees would have to identify on their long-form applications a control group (consisting entirely of minorities and/or women or entities 100 percent owned and controlled by minorities and women) that has de jure and de facto control of the applicant and holds either at least 50.1 or 25 percent of the applicant's equity, depending upon which option is elected.

113. We believe that a modification of our 50.1 percent equity requirement would best achieve the Congressional objective of providing effective and long-term economic opportunities for women and minority-owned firms in narrowband PCS. At the same time, we propose to maintain strict enforcement of the requirement that actual control reside with the qualified designated entities. Thus, to establish their eligibility for tax certificates, enhanced installment payments, bidding credits and relaxed cellular attribution rules, women and minority-owned applicants electing to use the 25 percent equity option could not in any instance allow an individual investor who is not in the control group to own more than a 25 percent passive equity interest. This restriction would apply even in circumstances in which allowing an investor to exceed these limitations would not result in the applicant's exceeding the gross revenues and other financial standards that apply to other bidders in the entrepreneurs' blocks and other situations involving financial caps. These structural safeguards, as well as the general requirement that other investors hold only passive interests in women and minority-owned applicants, would help to ensure that control truly remains with the women and minority designated entities.

114. For example, a women or minority-owned firm electing to use the 25 percent option may have a non-eligible investor with more than a 25 percent passive stake and still qualify to bid in the entrepreneurs' blocks or for benefits that apply to small businesses, as long as the attributable revenues of the investor do not cause the applicant to exceed the gross revenues/total assets caps. In these contexts, no additional restrictions would be necessary, because women and minority-owned applicants, like other applicants, would be eligible to bid in these blocks and to qualify as small businesses so long as they comply with the same restrictions on financial eligibility that apply to other applicants. Since the attribution rule itself operates to ensure compliance with size limitations, it would not be necessary to impose additional restrictions on the size of interests held by investors with attributable interests. This firm would not qualify, however, for special measures applicable only to women and minority-owned businesses, such as "enhanced" installment payments or the 15 or 25 percent bidding credits, because it has a single non-eligible investor with more than a 25 percent passive interest. In circumstances in which women and minorities are required to retain only 25 percent of the firm's equity, this additional structural restriction would be appropriate because the objective in this context is to ensure not merely financial eligibility, but that women and minorities retain control of the license.

115. We set forth previously rules defining more explicitly the term "control" for purposes of determining whether a "control group" maintains de facto as well as de jure

license under the rules for entrepreneurs' blocks. We also seek comment on other means to achieve larger geographic license sizes such as designating these BTA licenses as nationwide licenses or by maintaining the BTA designation, but allowing combinatorial bidding for the designated regions. Commenters should also address the appropriate premium we should adopt for comparison of combinatorial and BTA license bids if we allow combinatorial bidding. We also seek comment on whether some of the MTA and BTA response channels should be redesignated as larger license areas with bidding limited only to those entities eligible to bid for entrepreneurs' block licenses.

VII. PROCEDURAL MATTERS AND ORDERING CLAUSE

A. Regulatory Flexibility Analysis

123. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 604, the Commission's final analysis for the Memorandum Opinion and Order and the Commission's initial regulatory flexibility analysis for the Further Notice is as follows:

Memorandum Opinion and Order – Final Analysis

124. Need for, and Purpose of, this Action. As a result of new statutory authority, the Commission may utilize competitive bidding mechanisms in the granting of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis, see generally 5 U.S.C. § 603, within the Notice of Proposed Rule Making in this proceeding, and published Final Regulatory Flexibility Analyses within the Second Report and Order (at ¶¶ 299-302) and the Third Report and Order (at ¶¶ 91-94). As noted in these previous final analyses, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out statutory mandates that certain designated entities, including small entities, be afforded an opportunity to participate in the competitive bidding process and in the provision of spectrum-based services.

125. Summary of the Issues Raised by the Public Comments. In regard to the specific narrowband PCS issues addressed by this Third Memorandum Opinion and Order, no comments were submitted in response to our Initial Regulatory Flexibility Analysis.

126. Significant Alternatives Considered. Although, as described in (B) above, no comments were received pertaining to narrowband PCS, the Second Report and Order and Third Report and Order addressed at length the general policy considerations raised as a result of the Commission's new auction authority.

Further Notice – Initial Analysis

127. Reason for the Action. The purpose of the Further Notice is to implement competitive bidding rules and regulations rules consistent with the Commission's competitive bidding authority that will carry out the statutory mandates that certain designated entities,

designated entities seeking special treatment under the provisions adopted herein. These standards would give applicants clear guidance regarding the relationships that we will attribute for purposes of applying any of our sized-based eligibility criteria.

I. Limit on Licenses Awarded in Entrepreneurs' Blocks

119. The special provisions which we propose for designated entities are based, in part, on our mandate to fulfill the congressional goal that we disseminate licenses among a wide variety of applicants. 47 U.S.C. § 309(j)(3)(B). Therefore, in proposing the financial assistance measures set forth in this Further Notice, we are concerned about the possibility, even if remote, that a few bidders will win a very large number of the licenses in the entrepreneurs' blocks. As a consequence, the benefits that Congress intended for designated entities would be enjoyed, in disproportionate measure, by only a few individuals or entities. Congress, in our view, did not intend that result. We therefore propose steps to ensure that the financial assistance provided through our rules is dispersed to a reasonable number of applicants who win licenses in these blocks.

120. To achieve a fair distribution of the benefits intended by Congress, we propose a limit on the total number of licenses within the entrepreneurs' blocks that a single entity could win at auction. In setting this limit, we would avoid imposing a restriction that would prevent applicants from obtaining a sufficient number of licenses to create large and efficient nationwide or regional services. Specifically, we propose a limitation that no single entity may win more than 10 percent of the licenses available in the entrepreneurs' blocks. These licenses could be in any combination of frequency blocks. Such a limit would ensure that at least 10 winning bidders enjoy the benefits of the entrepreneurs' blocks. At the same time, it would allow bidders to effectuate aggregation strategies that include large numbers of licenses and extensive geographic coverage.

121. Further, this limitation would apply only to the total number of licenses that may be won at auctions in these proposed entrepreneurs' blocks; it would not be an ownership cap that applies to licenses that might be obtained after the auctions. For purposes of implementing this restriction, we would consider licenses to be won by the same entity if an applicant (or other entity) that controls, or has the power to control licenses won at the auction, controls or has the power to control another license won at the auction.

J. Redesignation of Certain Narrowband PCS Spectrum Blocks

122. Finally, we are concerned that there are companies that would be eligible for an entrepreneurs' block license that may desire larger license areas than MTAs and BTAs. It appears that over half of the bidders in the nationwide auction would have qualified for an entrepreneurs' block license. As a result, we propose to redesignate the two BTA licenses as regional licenses organized in the same configuration set forth in Section 24.102 of the rules. Doing so would give designated entities an opportunity to bid on a larger and more valuable

Application for New or Modified Common Carrier Radio Station Authorization
Under Part 22

Call Sign

Schedule A

Complete One Schedule A Application

SAMPLE

1(a) Does this application refer to an existing station? If "YES," give Call Sign: _____	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	2(a) Fee Submitted \$ N/A
(b) Is this an amendment to a pending application If "YES," give File No.: _____	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	(b) No. of separate sites requested in this application N/A

3. Name of Applicant. Indicate the name, mailing address and telephone number of the applicant. (For Subsidiary Communications Authorizations, see Instruction No. 8(C).)

Legal Name of Applicant (If person, list last name first)
Bidder, Jane Q.

Assumed Name Used for Doing Business (if any)
None

Mailing Street Address or P.O. Box, City, State and ZIP Code
456 Spectrum Drive, Dallas, TX 77248

Area Code - Telephone No.
(214) 123-4567

4. Contact Representative. Indicate the name, mailing address, and telephone number of person to contact, if other than applicant.

Name (Last name first)
Bidder, Jane Q.

Firm or Company Name
None

Mailing Street Address or P.O. Box, City, State and ZIP Code
456 Spectrum Drive, Dallas, TX 77248

Area Code - Telephone No.
(214) 123-4567

6. Type of Service (Mark "X" One)

- A. ☐ One-Way (Except Subsidiary Communications Authorization)
Mkt. No. 1- Freq. No. 1
- B. ☐ Two-Way
Mkt. No. 2- Freq. No. 6
Mkt. No. 4- Freq. Nos. 1, 6
- C. ☐ Both One-Way and Two-Way
- D. ☐ One-Way (Subsidiary Communications Authorization)
Will broadcast facilities be leased? ☐ YES ☐ NO
If "YES," submit as Exhibit _____
the name and address of the proposed lessee.

8. Carrier Type

- A. ☒ Radio Common Carrier B. ☐ Wireline Common Carrier

7. Nature of Service

N/A

- A. ☐ Public Land Mobile Service (Other than Air-Ground Radiotelephone Service)
- B. ☐ Domestic Public Cellular Radio Telecommunications Service
Specify Market No. and Block below:
▶ _____ ▶ _____
- C. ☐ Offshore Radio Service
- D. ☐ Rural Radio Service
- E. ☐ Air-Ground Radiotelephone Service
- F. ☐ Developmental
Attach as Exhibit _____ a narrative statement in support of the request.
(See 47 CFR 22, Subpart F)

9. Control Points - Table MOB-1A: to be completed for control points which are initial, additional or deleted.
In Column (B) use the following symbols to specify status: I=Initial; A=Additional; D=Deleted.

(A) Location (Street Address, City or Town and State)	(B) I, A or D	FCC Use Only Control Point No.
N/A		

- Table MOB-1B: to be completed for control points which are to be relocated. Give the present location first, followed by the proposed location.

Location (Street Address, City or Town and State)	FCC Use Only Location No.
1. Present Location: Proposed Location	
2. Present Location: Proposed Location	

including small entities, are afforded an opportunity to participate in the competitive bidding process and in the provision of spectrum-based services.

128. Objectives of this Action. The Omnibus Budget Reconciliation Act of 1993 and the subsequent Commission actions to implement it are intended to establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out statutory mandates that certain designated entities, including small entities, are afforded an opportunity to participate in the competitive bidding process and in the provision of narrowband PCS services.

129. Legal Basis. Authority for the for the Further Notice can be found in the Omnibus Budget Reconciliation Act of 1993 and in Sections 2(a), 4(i) 303(r), 309(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152 (a), 154 (i), 303(r), 309(i) and 309(j).

130. Reporting, Recordkeeping and Other Compliance Requirements. The proposals under consideration in this Further Notice include the possibility of new reporting and recordkeeping requirements for a number of small business entities.

131. Federal Rules Which Overlap, Duplicate or Conflict With These Rules. None.

132. Description, Potential Impact, and Number of Small Entities Involved. The rule changes proposed in this Further Notice could effect smaller entities if they have mutually exclusive applications for initial licenses or permits for narrowband PCS licenses. The Further Notice proposes to establish certain narrowband PCS spectrum blocks for bidding exclusively by smaller entities and to provide installment payments and bidding credits to certain eligible entities bidding within those blocks.

133. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives. The Further Notice proposes certain provisions for smaller entities designed to ensure that such entities have the opportunity to participate in the competitive bidding process and in the provision of narrowband PCS services.

B. Ex Parte Rules

134. This is a non-restricted notice and comment rule making proceeding. Ex Parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

C. Comment Dates

Narrowband PCS Filing Instructions for FCC Form 401

- Complete only the Schedule A on the Form 401.
- Completion of the Form 401 Schedule A

<u>Item</u>	<u>Response</u>
1(a)	NO
1(b)	NO
2(a)	N/A
2(b)	N/A
3	Complete
4	Complete
6	Type in Market No. and Frequency No. (also submit Exhibit III)
7	N/A
8	Select A
9	N/A
10-17	Complete
18	Cross-reference Ownership Exhibit (V)
19	N/A
20	N/A
21	N/A
23-26	Complete
22	Attach the following Exhibits:
I	<i>Ownership Interest</i> 47 C.F.R. §1.2107(d) Submission of Down Payment and Filing Long-Form Applications
II	<i>Showing for PMRS</i> 47 C.F.R. §20.9(b)(1)
III	<i>Market and Frequency Exhibit</i> Detailed Listing of Markets and Frequencies as described in the Public Notice, Report No. AUC-94-03, Auction No. 3, released August 17, 1994
V	<i>Ownership Exhibit</i> 47 C.F.R. §24.413

Microfiche copies of the FCC Form 175 or 175-S are required. See Section 24.406.

FCC 401 - Schedule A - Page 2
January 1993

Application for New or Modified Common Carrier Radio Station Authorization
Under Part 22

Call Sign

Schedule A

Complete One Schedule A Per Application

1(a) Does this application refer to an existing station? <input type="checkbox"/> YES <input type="checkbox"/> NO If "YES," give Call Sign: ▶ _____		2(a) Fee Submitted \$ _____
(b) Is this an amendment to a pending application <input type="checkbox"/> YES <input type="checkbox"/> NO If "YES," give File No.: ▶ _____		(b) No. of separate sites requested in this application
3. Name of Applicant. Indicate the name, mailing address and telephone number of the applicant. (For Subsidiary Communications Authorizations, see Instruction No. 8(C).)		
Legal Name of Applicant (If person, list last name first)		
Assumed Name Used for Doing Business (if any)		
Mailing Street Address or P.O. Box, City, State and ZIP Code		Area Code - Telephone No.
4. Contact Representative. Indicate the name, mailing address, and telephone number of person to contact, if other than applicant.		
Name (Last name first)		
Firm or Company Name		
Mailing Street Address or P.O. Box, City, State and ZIP Code		Area Code - Telephone No.
6. Type of Service (Mark "X" One) A. <input type="checkbox"/> One-Way (Except Subsidiary Communications Authorization) B. <input type="checkbox"/> Two-Way C. <input type="checkbox"/> Both One-Way and Two-Way D. <input type="checkbox"/> One-Way (Subsidiary Communications Authorization) Will broadcast facilities be leased? <input type="checkbox"/> YES <input type="checkbox"/> NO If "YES," submit as Exhibit _____ the name and address of the proposed lessee.		7. Nature of Service A. <input type="checkbox"/> Public Land Mobile Service (Other than Air-Ground Radiotelephone Service) B. <input type="checkbox"/> Domestic Public Cellular Radio Telecommunications Service Specify Market No. and Block below: ▶ _____ ▶ _____ ▶ _____ ▶ _____ C. <input type="checkbox"/> Offshore Radio Service D. <input type="checkbox"/> Rural Radio Service E. <input type="checkbox"/> Air-Ground Radiotelephone Service F. <input type="checkbox"/> Developmental Attach as Exhibit _____ a narrative statement in support of the request. (See 47 CFR 22, Subpart F)
8. Carrier Type A. <input type="checkbox"/> Radio Common Carrier B. <input type="checkbox"/> Wireline Common Carrier		
9. Control Points - Table MOB-1A: to be completed for control points which are initial, additional or deleted. In Column (B) use the following symbols to specify status: I=Initial; A=Additional; D=Deleted.		
(A) Location (Street Address, City or Town and State)	(B) I, A or D	FCC Use Only Control Point No.
- Table MOB-1B: to be completed for control points which are to be relocated. Give the present location first, followed by the proposed location.		
Location (Street Address, City or Town and State)		FCC Use Only Location No.
1. Present Location:		
Proposed Location		
2. Present Location:		
Proposed Location:		

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**Application for New or Modified Common Carrier Radio Station Authorization
Under Part 22****General Information and Instructions**

1. The FCC Form 401 is in two parts, Schedule A and Schedule B. Complete one Schedule A for each application. Complete one Schedule B for each antenna location.
Note: Separate Schedule B's may be obtained.

Uses of FCC Form 401

2. FCC Form 401 is to be used for the following:
(A) New Common Carrier Radio Station Authorization.
(B) Modification of an existing station authorization (except as prescribed in Section 22.9(d) of the Commission's Rules)
(C) Amendment of Pending Application.
(D) Partial Assignment.
(E) Subsidiary Communications Authorization.

3. The form consists of the covering instructions and the following pages which comprise the main body of the form. Remove instructions before submitting the form to the Commission.

Applicable Rules and Regulations

4. Before this application is prepared applicant should refer to Part 22 of the Commission's Rules and Regulations, copies of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Subparts B and C of Part 22 apply to all types of applicants and in certain instances may require information to be filed with an application in addition to that specified in this application form. Applicants should make every effort to file complete applications. Failure to do so can result in a rejection and return of the application or a delay in the processing of the application.

Paper Copies

5. Number of paper copies to be submitted varies depending on the type of service applied for. See 47 CFR Section 22.6 for specific instructions.

Microfiche Copies

6. Filings exceeding five pages must be submitted on microfiche. Submit three microfiche copies (one original and two copies). See 47 CFR Section 22.6. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm X 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicating Film. The

microfiche must be placed in paper microfiche envelopes and submitted in a 5" x 7.5" envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes. An original and two copies of microfiche must be submitted.

Fees

7(A) A processing fee may be required with this application. Refer to either 47 CFR 1.1105, the Common Carrier Services Fee Filing Guide, or call (202)632-FEES for appropriate fee. **DO NOT SEND CASH.** Payment may be made by check, bank draft, or single money order payable to: **Federal Communications Commission.**

Specific Instructions for Schedule A and Schedule B:

8(A) Cellular Radio Telecommunications Service - See Subpart K, Part 22 which specifies additional exhibits that are required.

(B) Temporary Locations - Applicants for any class of station at temporary locations should complete either Item 27 or provide an exhibit showing the area of operation. This exhibit should be shown in Item 22 of the application. Applicants for temporary-fixed station facilities described in Section 22.610 of Part 22 are not required to answer Items 9, 34, 35, 36, columns 6 and 7 in MOB-2, or any part of MOB-3.

(C) Subsidiary Communications Authorizations - Complete only items 1, 2, 3, 4, 6, 23, 24, 25, 26, 27, 28 and 33(X1). Special instructions are as follows:

Item 1 - Specify the Call Sign of the Broadcast Station.
Item 3 - The name and address of the Broadcast Station.
Item 6 - If the Common Carrier Paging Service is to be provided by an entity other than the broadcast licensee, submit an exhibit listing the name and address of the proposed lessee. The exhibit should also include a certified statement signed by the lessee that he (she) is familiar with Part 22 of the Rules.
Item 33(X1) - Give Broadcast frequency or TV channel number.

Exhibits

9. Each document required to be filed as an exhibit should be current as of the date of filing. If reference is made to information already on file with the Commission see Item 10 below.

Cross-Referencing

10. You may cross-reference documents, exhibits, or

10. Applicant is: (Mark "X" One) A. <input type="checkbox"/> Individual B. <input type="checkbox"/> Partnership C. <input type="checkbox"/> Unincorporated Association D. <input type="checkbox"/> Corporation		11. If applicant is a corporation (including joint stock companies) identify the state or country laws under which it is organized.	
		Place an "X" in the appropriate column.	
		YES	NO
12. Does the applicant certify that it complies with Section 310(b) of the Communications Act of 1934, as amended, and Section 22.4 of the Commission's Rules regarding alien ownership and control? If "NO," attach as Exhibit _____ a statement describing applicant's ownership or control by aliens.			
13. Is applicant directly or indirectly controlled by any other corporation? If "YES," give names and addresses of all such controlling corporations, including organization having ultimate control, in Exhibit _____.			
14. Has applicant or any party to this application had any FCC station license or permit revoked or had any application for permit, license or renewal denied by this Commission? If "YES," attach as Exhibit _____ a showing giving call sign of license or permit revoked and relate circumstances.			
15. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? If "YES," attach as Exhibit _____ a statement relating the facts.			
16. Has the applicant, or any party to this application, or any person directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If "YES," attach as Exhibit _____ a statement relating the facts.			
17. Is applicant, or any person directly or indirectly controlling the applicant, presently a party in any pending matter referred to in Items 15 and 16? If "YES," show in Exhibit _____ a statement relating the facts.			
18. Is applicant directly or indirectly, through stock ownership, contract, or otherwise currently interested in the ownership or control of any other licensed radio stations or pending applications for radio stations under Part 22 within 40 miles of the station applied for here? (See Sections 22.13(a) of FCC Rules and Regulations.) If "YES," show, for each, call sign (if known), file no. (if pending), service, base station location (city and state), frequency and name of licensee in Exhibit _____. (Item 18 does not apply to cellular applicants.)			
19. Has applicant been denied state certification for the facilities proposed in this application? If "YES," attach as Exhibit _____, a statement describing the state authority's action and any pending appeals, or whether the state appeal process has been exhausted and attach copies of any relevant decisions.			
20. Is this an application for one or more additional channels for which a loading study is required per Sections 22.16 and 22.516 of FCC Rules? If "YES," include required loading study as Exhibit _____. In the same Exhibit, show data on held orders or from a valid statistical survey or any other materials which demonstrate that the public interest would be served by grant of this application.			
21. Is this application for more than one channel on a new system? If "YES," show, in Exhibit _____, data on held orders or from a valid statistical survey or any other materials which demonstrate that the public interest would be served by grant of this application.			
22. List below the Exhibits that are attached to this application.			
Exhibit Number	Sec. and/or Item No. of Rule or Form	Exhibit Number	Sec. and/or Item No. of Rule or Form
CERTIFICATION			
The APPLICANT waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. All statements made in the attached exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that the statements made in this application are true, complete and correct to the best of his (her) knowledge and belief, and are made in good faith.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).		23. Date	24. Typed Name of Person Signing
		25. Signature	26. Title (Position Held by Person Signing Application)

Exhibit III
Markets and Frequencies

<u>Market No.</u>	<u>Frequency No.</u>	
R-001 - Northeast Region	1	(940.25-940.30 and 901.25-901.30 MHz)
R-002 - Southern Region	6	(930.70-930.75 and 901.825-901.8375 MHz)
R-004 - Central Region	1, 6	(940.25-940.30 and 901.25-901.30 MHz, 930.70-930.75 and 901.825-901.8375 MHz)

other lengthy showings already on file with the Commission only if: the information previously filed is **over one 8 1/2" by 11" page in length**, and all information therein is current and accurate in all significant respects; the cross-reference states specifically where the previously filed information can be found (i.e., station call sign and application file number, title of proceeding, docket number, and legal citations), including exhibit and page references. However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing. See Section 22.13(b) of the Rules.

Current Information

11. Information filed with the Commission must be kept current. The applicant should notify the Commission regarding any material change in the facts as they appear in the application. See Section 1.65 of the Commission's Rules.

Waivers

12. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver, under Section 22.19 of the Rules. A separate request, with the required showing, must be made for each rule waiver desired, identifying the specific rule or policy for which a waiver is requested.

Paperwork Reduction and Privacy Act Notice

13. Personal information requested through this form is authorized by the Communications Act of 1934, as amended, and specifically Section 308 thereof. The information will be used by Federal Communications Commission staff to determine eligibility for issuing authorizations for the use of frequency spectrum and to effect the provision of regulatory responsibilities rendered by the Commission under the Act. Failure to provide all requested information will delay the processing of the application. Information requested by this form will be available to the public. Your response is required to obtain the requested authorization.

Public reporting burden for this collection is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060-0046), Washington, D.C. 20503.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93-597, December 31, 1974, 5 U.S.C. 552(a)(3), and the Paperwork Reduction Act of 1980, P.L. 96-511, Section 3504(c)(3).